IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 174 OF 2006.

Smt. Vijaya Bukkam,
major, widow of Tulsidas Bukkam,
resident of House No. 177,
Kirbhat ward, Carmona,
Salcete, Goa,
through her duly constituted
Attorney Mrs. Mhananda alias
Nanda Tulsidas Bukkam,
resident of House No. 177,
Kirbhat Ward, Carmona,
Salcete, Goa. .... Petitioner.

Versus

1. The Additional Director of
Panchayats-I with office
at Junta House,
3rd Floor, Panaji, Goa.

2. The Village Panchayat of
Carmona, through its
Sarpanch, Carmona,
Salcete, Goa. .... Respondents.

Ms. S. Rao, Advocate for the Petitioner.

Mr. s. Vahidulla, Addl. Govt. Advocate for Respondent No.1.

Mr. M. Amonkar, Advocate for the Respondent No.2.

CORAM: SMT. RANJANA DESAI, J.

DATE: 12th JULY, 2006.

ORAL ORDER:

The petitioner has challenged in this Writ Petition, order dated

25th January, 2006, whereby the appeal filed under Section 66(7) of the Goa Panchayat Raj Act, 1994 seeking to set aside order dated 7.11.2003 issued by the respondent Panchayat directing her to demolish an illegal cowshed structure built in survey No.202/1 (Part) at Carmona Village was dismissed.

2. Notice dated 22.5.03 was issued by the Sarpanch of Village Panchayat, Carmona asking the petitioner to show cause why the illegal construction of cowshed carried out by her without taking permission of the Village Panchayat, Carmona should not be demolished. It is stated in the show cause notice that the site had been inspected by the Village Panchayat members and it is revealed that the petitioner had illegally constructed the cowshed without taking permission of the Village Panchayat. The petitioner submitted a reply dated 27th May, 2003. In short the petitioner's case is that the cowshed is in existence for more than 40 years. The explanation offered by the petitioner did not find favour with the Panchayat and on 7.11.03 the Panchayat passed a final order for demolition of the illegal structure. Appeal was carried to the Director of Panchayats. By the impugned order the said appeal was dismissed. The Director of Panchayats has observed that the appellant could not produce evidence of construction licence for the said cowshed. It is observed that this cowshed is for all purposes under Section 2(2) of Goa Panchayat Raj

Act 1994, a building. It is further observed that comparing the plan annexed to the Mamlatdar's order declaring her as mundkar as on 18.11.1997 and of the site inspection done on 9.5.2003 by the Panchayat, it is clearly established that the appellant has constructed a cowshed after 1997. It is further stated that the appellant has constructed a cowshed to the north of her mundkar house, admeasuring 40.25 sq. metres and at a distance of 3.5 metres away from the north of her mundkar house. It is further observed that the plan annexed to the case No.JM-1/MUND/PUR/11/94 dated 18.11.97, on the other hand shows a hut to the west of the mundkar house and much less than 3.5 metres from the said house. It is further observed that the area of the hut is 18 square metres and it is obvious that the appellant has undertaken a new construction. I find no perversity in this reasoning.

3. The learned counsel for the petitioner contended that the order of the Director of Panchayats is perverse. She submitted that the cowshed is in existence for about 40 years. She drew my attention to the order passed by the Joint Mamlatdar of Salcete Taluka, Margao in proceedings under Section 29 of the Goa, Daman and Diu Mundkars (Protection from Eviction) Control Act, 1975. She pointed out that in this order there is a reference to a dwelling house and a cowshed situated in the land in question. She submitted that therefore the cowshed is in existence from

1984 and this question has not been considered by the Director of Panchayats.

4. I am unable to accept this submission. It appears that on the basis of this very order the petitioner has purchased the dwelling house. Initial area purchased by her is 300 sq.metres as evidenced from From VI which is annexed as Exh.A to the petition. The plan annexed to the said Form, gives the area of the house which is in possession of the petitioner. Pursuant to the complaint made by the owner the site was inspected and it was found that the petitioner has constructed a cowshed close to her house and the length of the structure is 8.4 m. and breadth is 5 m. and height of the structure is 3 m. After this site inspection, show cause notice came to be issued to the petitioner. It is therefore clear that the construction which is now found on the said land is an additional construction and for that the petitioner does not have the required permission. In such circumstances, no interference is necessary with the impugned judgment which in my opinion is not perverse. However, it is clarified that if the petitioner adopts any other remedy under the Mundkar Act, the concerned authority may deal with her application in accordance with law and uninfluenced by the observations made by me in this order.

Writ Petition disposed of in the aforestated terms.

SMT. RANAJANA DESAI, J.

sl.